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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. TRAVON HARRIS, Defendant and Appellant.	B203494 (Los Angeles County Superior Ct. No. BA305584)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert J. Perry, Judge. Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Jason C. Tran and Alene M. Games, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant Travon Harris appeals from the judgment entered following a jury trial in which he was convicted of two counts of attempting to dissuade a victim or witness. Appellant contends insufficient evidence supports his conviction with respect to one victim and the trial court erroneously admitted evidence that the victims relocated. We affirm.

FACTS

Appellant's co-defendants punched and kicked Charlie Rodgers and rifled through his pockets as he left a neighbor's apartment. Rodgers ran home and told his wife Lakeisha about it. They looked outside through their security screen door and saw the co-defendants attempting to climb over the building's security gate. The co-defendants shouted death threats and "you got to move." Mrs. Rodgers called the police. Mr. Rodgers identified the co-defendants in a field show-up.

After midnight, Mr. and Mrs. Rodgers heard someone banging on their front door and ringing the doorbell. Mr. Rodgers opened the front door six or eight inches and saw appellant on the other side of the security screen, which was made of tight metal mesh. Mrs. Rodgers stood behind her husband and could clearly see appellant right outside the door. Appellant asked Mr. Rodgers what happened. Mr. Rodgers said appellant's friends attacked and attempted to rob him. Appellant said, "No they didn't," then shouted the same thing. When Mr. Rodgers insisted they had done something, appellant said, "You care anything about your wife and your son, you'll call down to the station and tell them they didn't do nothing to you." Appellant also said, "If you want to live, you will call and tell them they didn't do nothing." He threatened, "You better not go to court. You better not say anything happened. I have friends, little homies, and they trigger happy, and they'll do whatever I tell them. So if you value your family's life, you

won't say anything." Appellant also warned that "whatever happened" to Mr. Rodgers would "happen" to Mrs. Rodgers. Mr. Rodgers closed the door and Mrs. Rodgers called the police. The Rodgers believed appellant and his co-defendants were gang members.

When the police arrived, they told the Rodgers to pack a few things and moved them to a hotel for several weeks. The Rodgers then moved out of state, with financial assistance from the county.

The jury convicted appellant of two counts of attempting to dissuade a victim or witness and found appellant used or threatened to use force or violence. (Pen. Code, § 136.1, subds. (b) and (c).)[1] The jury also found a section 186.22 (b) gang enhancement allegation true with respect to each count. The court sentenced appellant to concurrent terms of seven years to life in prison. (§186.22, subd. (b)(4)(C).)

DISCUSSION

1. Admission of relocation evidence

Over appellant's relevance and Evidence Code section 352 objections, the trial court admitted evidence the government helped relocate the Rodgers family. Appellant contends the court erred, in that the evidence was irrelevant and more prejudicial than probative. He further argues its admission violated due process.

Evidence is relevant if it has any tendency in reason to prove or disprove any disputed fact of consequence to the determination of an action. (Evid. Code, § 210.) Relevant evidence should be excluded, however, if the trial court, in its discretion, determines that its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create a substantial danger of undue prejudice, confusion of the issues, or misleading the jury. (Evid. Code, § 352.)

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[1] Unless otherwise noted, all further statutory references pertain to the Penal Code.

We review a trial court's ruling on the admissibility of evidence for abuse of discretion. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1113.)

The relocation evidence was relevant to the Rodgers' credibility, which all three defendants vigorously challenged. The Rodgers' willingness to immediately abandon their home, uproot their family, and move far away reflected their deep fears and thus tended to demonstrate the truth of their police report and testimony that appellant threatened them. Moreover, co-defendants attempted to cast doubt upon the Rodgers' credibility with the financial assistance the government provided them to relocate. The relocation evidence provided a necessary and relevant explanation.

The evidence thus had substantial probative value. Appellant argues the evidence was unduly prejudicial because it effectively told the jury the police believed appellant threatened the Rodgers and that the danger was real. The same may be said, however, of any arrest or prosecution based upon victim or witness testimony and identification. This inherent problem is addressed, however, by the presumption of innocence, upon which the jury was fully instructed. We must presume the jury followed and applied that instruction. (*People v. Horton* (1995) 11 Cal.4th 1068, 1121.) The trial court did not abuse its discretion by concluding the danger of undue prejudice from the admission of the relocation evidence did not substantially outweigh its probative value.

Finally, admission of this evidence did not render appellant's trial so fundamentally unfair as to constitute a violation of due process. (*Dowling v. United States* (1990) 493 U.S. 342, 352, 110 S.Ct. 668.)

2. Sufficiency of evidence

Criminal judgments must be supported by evidence sufficient to persuade a reasonable jury of guilt beyond a reasonable doubt. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138.)

Appellant contends the evidence was insufficient to support his conviction of dissuading Mrs. Rodgers because there was no evidence he knowingly threatened her with the specific intent to dissuade her from testifying. In reliance upon Mrs. Rodgers' testimony that a person outside could not see through the security screen, appellant argues he did not know she was near the door when he spoke to her husband.

However, section 136.1 does not require personal or direct communication with the victim or witness the defendant intends to dissuade. (*People v. Foster* (2007) 155 Cal.App.4th 331, 335 [defendant asked intermediary to convey dissuasive statements to victim].). An *attempt* to dissuade a witness or victim is complete when the defendant has the intent to dissuade the witness or victim and performs a direct, ineffectual act that goes beyond mere preparation and shows the defendant is putting his plan into action. (Pen. Code, § 21a; *People v. Kipp* (1998) 18 Cal.4th 349, 376.) Appellant therefore did not need to know whether Mrs. Rodgers heard his threats. His statements included threats to harm her, and the jury could reasonably infer appellant knew and intended that Mr. Rodgers would inform her of the threats. By making the threats to Mr. Rodgers, appellant did everything necessary to constitute an attempt to dissuade Mrs. Rodgers from providing information to the police or otherwise assisting in a prosecution.

Moreover, testimony regarding co-defendants' behavior supports an inference that a person outside the apartment could see through the security screen. The Rodgers testified that when they saw co-defendants attempting to climb over the security gate, the wooden door was only partially open, Mrs. Rodgers stood behind Mr. Rodgers, and co-defendants called upon Mrs. Rodgers to open the gate and then called her names. Accordingly, a reasonable jury could have found, beyond a reasonable doubt, appellant saw Mrs. Rodgers through the security screen, and he knowingly and intentionally made his threats to her, as well as to her husband.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

BAUER, J.*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

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*Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.